

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:06CR123
	)	
v.	)	
	)	
JAMAAL A. MCNEIL,	)	ORDER
	)	
Defendant.	)	
	)	

This matter is before the court on defendant's motion for leave to proceed in forma pauperis, Filing No. 163, and on various pro se pleadings filed by the defendant, Filing Nos. 159 (captioned "Writ of Habeas Corpus with Supporting Affidavit and Etc."), 160 (captioned "Motion to Subpoena Documents and supporting affidavit and poverty affidavit"), 161 (captioned "Motion to Object, Suppress, and Dismiss"), 162 (captioned "Motion for Summary Judgment"). It appears to the court that the pleadings are intended as a Motion to Vacate, Set Aside, or Correct a Sentence by a Federal Prisoner under 28 U.S.C. § 2255. The defendant was tried in this court and a judgment of conviction was entered on August 9, 2007. Under 28 U.S.C. § 2255, a one-year period of limitation, from the date on which the judgment of conviction becomes final, applies to the motion. The defendant is advised that the current motion is timely under the one-year statute of limitations.

Before a court can recharacterize a pro se litigant's pleading or motion as a first Section 2255 motion, it must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent Section 2255 motion will be subject to the restrictions on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains

all the Section 2255 claims he believes he has. *Castro v. United States*, 540 U.S. 375, 383 (2003). Accordingly, the defendant will be allowed to amend or withdraw the motion. The defendant should either amend or withdraw the pleading, if he so elects, within 30 days of the date of this order. If the defendant does not respond to this order, the court will proceed to decide the § 2255 motion as it currently stands. Accordingly,

IT IS ORDERED:

1. That the defendant's Motion to Proceed In Forma Pauperis (Filing No. 163) is granted;
2. If defendant chooses to amend or withdraw his pleading, he should do so by March 13, 2008;
3. If no amended pleading is filed by that date, the court will construe the pro se pleadings as the defendant's first Motion to Vacate, Set Aside, or Correct a Sentence by a Federal Prisoner under 28 U.S.C. § 2255 and any subsequent motion to vacate will be subject to the restrictions on "second or successive" motions under the statute.

DATED this 13<sup>th</sup> day of February, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
CHIEF DISTRICT JUDGE